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# STATE OF NEBRASKA

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Service Rules for the 698-746, 747-762	)	WT Docket No. 06-150
and 777-792 MHz Bands	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
Section 68.4(a) of the Commission's Rules	)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones	)	
Biennial Regulatory Review – Amendment of	)	WT Docket No. 03-264
Parts 1, 22, 24, 27, and 90 to Streamline and	)	
Harmonize Various Rules Affecting Wireless	)	
Radio Services	)	
Former Nextel Communications, Inc.	)	WT Docket No. 06-169
Upper 700 MHz Guard Band Licenses	)	
and Revisions to Part 27 of the	)	
Commission's Rules	)	
Implementing a Nationwide, Broadband,	)	PS Docket No. 06-229
Interoperable Public Safety Network in	)	
the 700 MHz Band	)	
Development of Operational, Technical and	)	WT Docket No. 96-86
Spectrum Requirements for Meeting Federal,	)	
State and Local Public Safety Communications	)	
Requirements Through the Year 2010	)	
Declaratory Ruling on Reporting Requirement	)	WT Docket No. 07-166
under Commission's Part 1 Anti-Collusion Rule	)	

## REQUEST FOR WAIVER OF COMMISSION RULES

**STATE OF NEBRASKA**  
**Division of Communications**

## **I. INTRODUCTION**

The State of Nebraska hereby respectfully requests that the Federal Communications Commission (“Commission” or “FCC”) grant a waiver of the prohibition on new operations to permit completion of a partially deployed system operating in frequencies held by the State of Nebraska with use granted to Douglas County, a political subdivision of the State of Nebraska.

The Commission has prohibited “authorization . . . of any new narrowband operations in Channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69,” after August 30, 2007.<sup>1</sup>

A recent public notice further states that narrowband equipment may be placed into operation after August 30, 2007, but only in the new consolidated narrowband block.<sup>2</sup> Thus, the State Of Nebraska respectfully requests that the Commission grant a waiver of the prohibition to permit deployment of new equipment, including handsets and base stations, after August 30, 2007.<sup>3</sup>

Without such a waiver, the Commission’s policy poses a significant threat to Douglas County’s plans to complete implementation of a needed new life-saving communication system in its jurisdiction.

## **II. BACKGROUND**

The State Of Nebraska is coordinating with local entities of government to provide needed spectrum for their implementation of 700 MHz systems critical to the operation of

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<sup>1</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) (“Order” or “Second Report and Order”).

<sup>2</sup> New Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Block Prohibited as of August 30, 2007, Public Notice, PS Docket No. 06-229, WT Docket No. 96-86, DA 07-3644 (August 16, 2007).

<sup>3</sup> The State Of Nebraska recognizes that, pursuant to the Order, this new equipment will not be eligible for relocation funding. The State of Nebraska disagrees with this policy against relocation funding, but notes that this Request for Waiver does not address reimbursement issues. Thus, the State of Nebraska seeks this waiver request without prejudice to any future motions opposing the policy for relocation funding.

capabilities currently in operation. State Of Nebraska's jurisdiction includes the Urban Area Security Initiative jurisdictions in and around the Omaha metropolitan area, including Douglas County, Washington County, Sarpy County and Pottawattamie County, Iowa. These State of Nebraska frequencies are a required component for completing implementation of a multi-county, bi-state interoperable mission-critical high performance data communication system for first responders on the current 700 MHz narrowband spectrum under the State of Nebraska's call sign **WPTZ786**. Under this call sign the State is authorized frequencies on all State Channels: 764-776/794-806 MHz, specifically within the UASI Region and nearby jurisdictions, frequencies: Ch 73-76, 764.4625/794.4625 MHz, Ch 193-196 765.2125/795.2125 MHz, Ch 313-316 765.9625/795.9625 MHz, Ch 733-736 774.5875/804.5875 MHz, Ch 853-856 775.3375/805.3375 MHz, Ch 925-928 775.7875/805.7875 MHz, Ch 929-932 775.8125/805.8125 MHz, Ch 933-936 775.8375/805.8375 MHz.

Because of the complicated nature of this process, Douglas County and the State of Nebraska started planning over 5 years ago to coordinate the need for this spectrum. Douglas County received budget approval and placed orders for equipment in September of 2002. Since then, the first phase of the fixed network equipment has been installed and tested, and approximately half of the initial order of subscriber equipment has been deployed. Full deployment of this first phase was scheduled for October 2007. Given the critical need for mission-critical interoperable communications in the State of Nebraska's UASI region, the inability to fully utilize the 700 MHz system threatens the safety and lives of Douglas County's first responders and the health and property of the public they serve. This threat is immediate and will linger for years.

### **III. THE COMMISSION SHOULD GRANT STATE OF NEBRASKA A WAIVER OF THE COMMISSION'S RULE PROHIBITING NEW EQUIPMENT.**

Under Section 1.3 of the Commission's rules,<sup>4</sup> the Commission may exercise its discretion to waive a rule for "good cause shown."<sup>5</sup> A waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will help serve the public interest.<sup>6</sup>

The waiver process allows the Commission to "maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."<sup>7</sup> In deciding whether or not to grant specific waiver requests, the Commission has indicated it must "take into account considerations of hardship, equity, or more effective implementation of overall policy" in its broader quest for regulation in the "public interest."<sup>8</sup> As explained below, granting the State of Nebraska's request would serve policy objectives of the Commission, particularly the deployment of spectrum to meet public safety needs.

The State of Nebraska, Douglas County, and its UASI Region will undergo significant hardship if the FCC does not waive the new rule to permit Douglas County to deploy its equipment as planned. As noted above, Douglas County has invested significant time and money in planning a new state of the art, interoperable communications system in the 700 MHz spectrum formerly allocated for public safety narrowband communications.

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<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, 14 FCC Rcd 6806, ¶ 11 (1999).

<sup>6</sup> *Id.* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>8</sup> *Id.*

It is impossible to fully deploy this initial phase in Douglas County, much less extend coverage into the entire UASI region, as planned, by the August 30, 2007 deadline. By the time the public notice was issued, Douglas County was left with two weeks to deploy the remaining 150 mobile units (which are on site and waiting to be installed), and expand the system with an additional 7 sites, as planned. The FCC's new rule will cause a significant portion of the planned system to not be deployed; the Homeland Security grant, already approved specifically for adding the additional sites to expand the 700 MHz system into the entire UASI region, will thus be placed in jeopardy. This would not only deplete precious funding, but also significantly diminish the ability to adequately meet immediate needs for vital mission-critical communications in Douglas County's UASI region for years to come, directly impacting public safety operations in the State of Nebraska.

In addition, equity weighs in favor of granting the State of Nebraska a waiver of the new prohibition on deploying new equipment in eight of the twelve megahertz that is currently allocated for public safety narrowband use. Douglas County has planned and designed its system based on a review of Commission rules and an expectation that such rules would remain unchanged without *significant* notice to and a reasonable period of transition for public safety entities such as Douglas County and the State of Nebraska. The Commission has instead given Douglas County less than two weeks to either finish deploying an extensive, complicated system ahead of schedule or forfeit years of time, money and resources spent deploying this system. A freeze on equipment was not found anywhere in the proposed rules or arguably the Order and first clearly appeared in the public notice reminding public safety about the new rules. The State of Nebraska did not anticipate such a harsh result. Given the State of Nebraska's reasonable reliance on the Commission's previous plan and associated rules and the fact that State of

Nebraska could not have fairly anticipated this new requirement, both equity and responsible public policy dictate that the Commission grant the State of Nebraska a waiver of the new policy to permit deployment of Douglas County's planned 700 MHz mission-critical high performance data system.

Lastly, a waiver of the rules for the State of Nebraska would be more effective in implementing the Commission's goal of improving public safety resources. As noted above, Douglas County has spent significant resources developing this system, which is partially complete. Douglas County has an immediate need for the system and rendering it useless would be directly contrary to any goal of improving public safety resources. Further, the Commission created the general prohibition on new equipment in order to help define and contain costs of relocation. Granting the State of Nebraska's waiver request, however, will not go against this goal; under the rules adopted in the Order, the State of Nebraska's request does not affect the cost of relocation because the equipment deployed after August 30, 2007 would not be eligible for relocation funding. Even so, because Douglas County can fairly estimate which equipment will be deployed and will need to be relocated, certainty and clarity of costs would not be impacted.

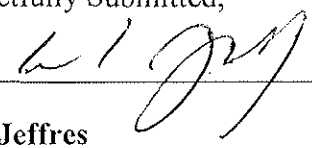
Moreover, although these goals of defining and containing costs are important, they do not outweigh the State of Nebraska's immediate need to access to viable, usable spectrum in the next few years, or the public's ultimate interest in the protections afforded by such access. Douglas County's system will fill an immediate need to help save lives and property in the short term. Allowing Douglas County to deploy its equipment as planned will further the Commission's goal of helping public safety provide the most effective and efficient communications for the American public.

#### **IV. CONCLUSION**

The State of Nebraska respectfully requests that the Commission grant a waiver of the prohibition on deploying new equipment to permit the State of Nebraska's most populous political subdivision to deploy new equipment for existing operations outside of the consolidated narrowband blocks. The State of Nebraska's circumstances warrant a deviation from this rule and such deviation will help serve the public interest.

Respectfully Submitted,

By: \_\_\_\_\_

  
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